IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 1800 OF 2004

IN

SUIT NO. 1205 OF 2004

Ajit V. Pangam .. Plaintiff.

vs.

Niyamat Zahairali

Cassam .. Defendant.

Mr. Ajit Pangam Plaintiff present in person.

Mr. R.M. Kadam i/by A. Bagla for plaintiff.

Mr. R.D. Soni for defendant.

Mr. H.S. Shreepad Moorthy i/by Piyush Shah for Applicant.

CORAM : S.U.KAMDAR, J.

DATE : 7th DECEMBER, 2004.

P.C.

1. The learned advocate appearing for the plaintiff seeks leave to withdraw the suit. The plaintiff is present in person and plaintiff confirms the instructions given to his Advocate M/s. Bagla Dandekar & Co. Mr. Moorthy, learned counsel appearing for the applicant in support of the

Chamber Summons Mr. Girish C. Lodha i/by Piyush Shah vehemently opposes the application for withdrawal of the suit on the ground that there is no written application for withdrawal of the suit. In my view,under the provisions of the Civil Procedure Code for withdrawal of the suit on the original side of the High Court a written application is not necessary and a person can by an oral application withdraw the suit. Mr. Moorthy appearing for the applicant contends that the suit should not be permitted to be withdrawn because it has been verified and affirmed by his client, namely, Girish C. Lodha as Constituted Attorney of the plaintiff. He further contends that in fact he has taken out an application on behalf of the said Constituted Attorney and applies today for ad-interim orders by contending that he is entitled to be added as the plaintiff in the suit. He relies on Order 1 Rule 10.

2. In my view the plaintiff is dominus litus and is entitled to withdraw the suit as and when he deems fit and proper and in fact his right of withdrawal of the suit is an absolute right unless the Court finds that the withdrawal is fraudulent or an abuse of the process of law. I do not find any such circumstances in the present case. In the circumstances, Suit No. 1205 of 2004 is dismissed as withdrawn.

3. In so far as the Chamber Summons is concerned, the applicant says that he wants to continue to prosecute the suit since he is entitled to certain rights in respect of the agreement for purchase of property being plot of land along with structure thereon, bearing Survey No. 488 (Part) and CTS Nos. 35, 35/1 to 59 admeasuring 1396.67 sq. mtrs. situated at Mamlatdarwadi Road Extension, Near liberty Garden, Malad Village, Taluka Borivali, Mumbai Suburban District. and he is also entitled to the specific performance of the said agreement which is subject matter of the suit. In my view, it is always open for the applicant to file his own suit and prosecute his own rights independently. He is not as a matter of fact and law entitled to prosecute the very same suit which the plaintiff wants to withdraw. In view thereof, the chamber summons is rejected since suit itself is withdrawn. Suit stands dismissed as withdrawn. No order as to costs.

2. Refund of Court fee as per rules.

3. C.C. expedited.